

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

LANE N.,

Claimant,

Vs.

**NORTH LOS ANGELES COUNTY
REGIONAL CENTER,**

Service Agency.

OAH No. L 2006050165

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on July 19, 2006, in Santa Clarita, California.

Claimant appeared at the hearing and was represented by his father and mother.

Lisa Kimura, Branch Supervisor, represented the North Los Angeles County Regional Center (NLACRC or Service Agency).

Oral and documentary evidence was received and the matter was deemed submitted.

ISSUES

1. Is the Service Agency required to provide funding for two respite workers to provide respite services?

2. May claimant's respite care providers utilize their personal private vehicles to transport claimant to and from community outings?

FACTUAL FINDINGS

1. Claimant is a 20 year-old man who has autistic disorder and suffers from profound mental retardation.

2. Claimant has requested funding for two respite care workers to provide care for claimant and to allow the respite care workers to take claimant on outings using their private vehicles.

3. On April 6, 2006, NLACRC issued a Notice of Proposed Action denying funding for a second respite worker. Along with the Notice of Proposed Action, Lisa Kimura, Branch Supervisor for NLACRC, wrote a letter to claimant's parents setting forth the reasons for the denial. Claimant appealed the denial of services as set forth in the Notice of Proposed Action.

4. Claimant has received respite services from Jay Nolan Community Services and is currently receiving these behavioral respite services from the Institute for Applied Behavior Analysis (IABA). The Service Agency has funded these services pursuant to claimant's Individual Program Plan (IPP). The February 20, 2004 IPP provides for two respite workers "when needed." The desired outcome of this IPP stated: "Lane's parents will have relief from assistance with Lane's care while Lane is engaged in productive activity in the community 6 days per week."

5. Jay Nolan Community Services, which has provided respite services for claimant through 2005, had difficulty staffing the suggested 2:1 ratio. Part of the problem is that claimant can very difficult and at times may become somewhat aggressive and may even strike his respite workers.

6. The November 3, 2005 IPP reiterates the difficulty of staffing respite workers. However, the problem was somewhat alleviated when claimant started to receive respite care from a particular respite care worker named Sharif. Sharif is a deaf-mute who communicates with claimant through hand gestures, and apparently has a strong bond with claimant. In fact, the parents reported that behavioral incidents are rare when Sharif provides care. However, it was noted in the IPP that staffing remained a problem during weekends when Sharif was not providing respite care. In late 2005, Sharif was no longer able to provide respite care for claimant. As a result, the parents requested that IABA provide behavioral respite care every day of the week.

7. In January 2006, IABA conducted an assessment for a behavioral respite plan. The goals of this plan included activities which promote appropriate interactions with peers and to promote community participation while providing a break for claimant's parents. Specifically, the plan set forth potential activities such as "eating at fast food restaurants, going shopping, or going to the movies. Additional activities . . . include outings to other community locations and social events."

8. On March 16, 2006, claimant was riding in a vehicle being driven by his respite worker when claimant kicked out one of the passenger windows. This was not the first time that claimant became aggressive while riding in a car. In fact, whenever claimant is transported by vehicle or bus, he is placed in a harness restraint.

9. At the hearing, NLACRC conceded that claimant should receive funding for two respite workers to provide care (2:1 staffing ratio) as called for in claimant's IPP. However, NLACRC contended that even with two respite workers, transportation of claimant in a private vehicle driven by a respite worker would be unsafe for claimant and/or the respite workers, and that NLACRC would not be able to authorize a service that would be unsafe.

DISCUSSION

10. Welfare and Institutions Code section 4512, subdivision (b), sets forth the various services and supports, including respite, which may be provided to a regional center consumer. In determining which services and supports are necessary for each consumer, consideration should be given to "the needs and preferences of the consumer or, when appropriate, the consumer's family."

11. Welfare and Institutions Code section 4690.2, subdivision (a), defines in-home respite services as "intermittent or regularly scheduled temporary non-medical care and supervision provided in the client's own home, for a regional center client who resides with a family member." Pursuant to section 4690.2, the purpose of respite care is to assist family members in safely maintaining the client at home under supervision, relieve family members from the demanding responsibility of caring for the client, and to attend to the client's basic self-help needs and other activities of daily living, including interaction and socialization.

12. Welfare and Institutions Code section 4648, subdivision (3), provides for the purchase of services through a vendorization process whereby regional centers select an appropriate vendor to provide services based on a selection process set forth in regulations promulgated by the Department of Developmental Services. The requirements for vendorization for in-home respite care are contained in California Code of Regulations, title 17, sections 56790 through 56802, and vendors that contract with regional centers to provide services must comply with these requirements.

13. California Code of Regulations, title 17, section 56792, subdivision (e), sets forth the functions of a respite worker as follows:

- (1) Each respite worker shall be responsible for the following functions:
 - (A) Performing the in-home respite services;
 - (B) Maintaining information required in Sections 56796 and 56798;
 - (C) Obtaining information concerning any specific care needs unique to the individual consumer at the time, or prior to the time, when the services are delivered; and

(D) Obtaining phone numbers and locations where family members can be contacted during the provision of in-home respite services.

(2) The vendor shall not assign other duties to the respite worker from the above noted functions during the hours that the worker is providing in-home respite services. (emphasis added)

14. California Code of Regulations, title 17, section 56788, subdivision (a)(1) provides that a regional center shall terminate funding for in-home respite services when, inter alia, the regional center determines that continued receipt of services from an agency jeopardizes the consumer's health or safety.

15. Welfare and Institutions Code section 4519.7, subdivision (b), provides for the potential of vicarious liability of a regional center due to acts of a negligent employee.

16. The facts in this case call for a weighing or balancing between the needs and preferences of the consumer (and his parents) and the responsibility of the regional center to insure that services are provided in a safe manner. For example, section 4512, subdivision (b), would allow for claimant to be taken on outings to restaurants, shopping malls and other commercial establishments that provide an opportunity for socialization. Claimant enjoys these outings and his parents prefer that his care providers be allowed to take claimant in their private vehicles as they have in the past. However, the respite care providers are not vendored for transportation services. Indeed, transporting a claimant is not specifically delineated under the functions of an in-home respite worker under regulation section 56792, subdivision (e), and a vendor is prohibited from assigning this duty to a respite worker.

17. Since a respite worker is not required to use his vehicle to transport a claimant, the regional center would not have information regarding the motor vehicle license status of claimant's respite workers, their driving records, their automobile insurance coverage and other information relevant to a vendor that provides transportation. This type of information is thoroughly reviewed and considered by a regional center when it contracts with a vendor for transportation services, but not for in-home respite services. NLACRC is rightfully concerned about these issues when a respite worker operates his or her own vehicle to transport claimant on outings.

18. In addition to the motor vehicle licensing concerns regarding the respite care worker, the regional center must be concerned with the aggressive conduct of claimant while riding in the vehicle. The NLACRC has been given notice of numerous incidents of aggressive and/or assaultive conduct by claimant. This creates a host of potential safety and liability concerns, not only for claimant and the respite workers, but also for the public at large, such as pedestrians and drivers and passengers of other vehicles. Therefore, the NLACRC properly disallowed respite workers from using their vehicles to transport claimant during community outings.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Code section 4710 et seq., based on Factual Findings 1, 2 and 3.

2. Cause exists to overrule the decision of the North Los Angeles County Regional Center denying funding for two respite care workers to simultaneously provide care for claimant, based on Factual Findings 4 through 9, and Welfare and Institutions Code section 4512, subdivision (b).

3. Cause exists to affirm the decision of the North Los Angeles County Regional Center prohibiting claimant's respite care workers from using their private vehicles to transport claimant to and from community outings, based on the Factual Findings 4 through 9, Welfare and Institutions Code sections 4519.7, subdivision (b), and 4690.2, subdivision (a), and California Code of Regulations, title 17, sections 56790, 56792, subdivision (e) and 56788, subdivision (a)(1).

4. This decision is based on findings 1 through 9, the testimony of all witnesses, exhibits 1 through 14, Welfare & Institutions Code Sections 4512, subdivision (3), 4519.7, subdivision (b), 4646, 4646.5, 4648, subdivision (3), and 4690.2, subdivision (a), California Code of Regulations, title 17, sections 56790, 56792, subdivision (e) and 56788, subdivision (a)(1).

ORDER

1. The decision of the North Los Angeles County Regional Center, denying funding for two respite care workers to simultaneously provide respite care for claimant (2:1 staffing ratio) is overruled. Claimant's appeal is granted.

2. The decision of the North Los Angeles County Regional Center, prohibiting claimant's respite care workers from driving their personal vehicles to transport claimant to and from community outings is affirmed. Claimant's appeal is denied.

DATED: August 2, 2006

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

